

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE AFFIDAVIT
APPLICATION FOR TWO (2) YEAR EXEMPTION
FEE \$125

State of _____)
County of _____) : SS
I, _____, **being first duly sworn, state:**
(applicant's name)

1. I am making these statements and representations in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department). I understand the Department is relying on the truth and accuracy of these statements when approving my independent contractor exemption certificate.

2. **My business structure is:** _____ Sole Proprietor _____ Partnership or LLP _____ Member of a Member-Managed LLC
My name is: _____
(Last) (First) (Middle)
My mailing address is : _____
(Street or PO Box) (City) (State) (Zip)
I do business as (DBA) _____
(Name of business)
My DBA physical address is: _____
(Street or directions to physical location) (City) (State) (Zip)
My telephone number is: (____) _____ - _____ **My social security number is:** _____ - _____ - _____
You are required to notify the Department if any of the above information changes after the certificate is granted.

3. I have an independently established trade, occupation, profession or business. My occupation(s) for which I am applying is/are: _____

I am providing documentation to the Department that demonstrates I have an established business for **each occupation** listed above. **(See Instructions on back)**

4. When acting as an independent contractor I must be free from control or direction over the performance of my services and the details of my work, both under contract and in fact. The hiring agent only offers direction and exercises control in matters essential to specifying the end result.

5. I understand and agree that if my Independent Contractor Exemption Certificate is granted, **I waive all rights and benefits** under the Workers' Compensation Act of Montana (Act). I understand I am precluded from obtaining benefits under the Act from the hiring agent related to my work performance as an independent contractor. I understand and agree that I am responsible for all taxes related to my work as an independent contractor. I understand as an independent contractor I will not be afforded protections under the Wage Payment Act, the Human Rights Act, the provisions of the Unemployment Insurance Laws, or the Workers' Compensation Act.

6. I also understand that if granted, the Independent Contractor Exemption Certificate will remain in effect for **TWO years** for the occupations listed on the certificate, unless I notify the Department in writing that I want to have the exemption cancelled, or the Department revokes or suspends the Independent Contractor Exemption Certificate. I understand that if I want to maintain my independent contractor exemption, I will have to re-qualify every two years.

Notice to Applicants: Montana law provides for a civil penalty of up to \$1,000 for each violation of the following: A person may not perform work as an independent contractor without obtaining either workers' compensation insurance or an Independent Contractor Exemption Certificate; perform work as an independent contractor when the Department has revoked or denied the Independent Contractor's Exemption Certificate; transfer to another person or allow another person to use an Independent Contractor Exemption Certificate that was not issued to that person; alter or falsify an Independent Contractor Exemption Certificate; and/or misrepresent the person's status as an independent contractor. The Department has the authority to investigate your working relationships as an independent contractor. If through investigation, the Department determines you are acting as an employee, this exemption may be suspended or revoked.

Notice to Employers: Montana law prohibits employers from avoiding their responsibility to provide workers' compensation insurance for employees. An employer may not require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or exert control to a degree that destroys the independent contractor relationship. In addition to any other penalty or sanction, a person or employer who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

Notice to Hiring Agents: You can be found to be an employer if you have the **right to control or exercise control** over the worker. A person who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

By signing this affidavit and the associated waiver form, I understand and agree that if my Independent Contractor Exemption Certificate is granted **I WAIVE ALL RIGHTS AND BENEFITS THAT I HAVE UNDER MONTANA'S WORKERS'COMPENSATION ACT.** I further declare that I am 18 years old or older, and that all of the information I have supplied in and with this Affidavit is true.

By: _____
Applicant Signature
SUBSCRIBED AND SWORN before me this _____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public
(Notarial seal) Residing at _____,
My commission expires _____

****Notaries Please Note****
Please put applicant under oath before executing this affidavit. This is a sworn statement.

Complete this form only if you are a sole proprietor, a working member of a partnership or a limited liability partnership (If claiming to be a partnership, you must provide a signed partnership agreement), or a member of a member-managed limited liability company and do not want workers' compensation on yourself. Independent contractor exemption certificates are issued individually. Each person requesting an exemption completes his or her own form.

If you have any questions about completing this affidavit or the waiver, or determining if you are an independent contractor, please call the Independent Contractor Central Unit in Helena at (406) 444-9029. You may visit our website at www.mtcontractor.com

INSTRUCTIONS

1. Read the entire affidavit and the entire accompanying waiver before signing. NOTE: The waiver is a legal document that when signed waives statutory workers' compensation benefits.
2. If you understand all of the statements on both forms and believe you qualify as an independent contractor, complete the affidavit and the waiver in the manner identified below.
3. In paragraph 2 of the affidavit, provide the following information:

- my business structure is (mark the appropriate blank with a check or X)

- my name is (include your full individual name)

- my mailing address is (include the number, street, box, city, state and zip code)

- I Do Business As (DBA) (business name)

- DBA physical address (include the number, street, directions, city, state and zip code)

- telephone number

- social security number
4. In paragraph 3 of the affidavit, you must list trades, occupations, professions, or businesses for which you are claiming an independent contractor exemption certificate.
5. Individuals who submit documentation for each trade, occupation, profession, or business that totals 15 points will receive an Independent Contractor Exemption Certificate. A maximum of two items may be submitted for consideration in each category. The Department may award points for items submitted up to the total points in each category. Items provided for certification may receive up to the following point value:
- | | | | | | |
|--|-----|-----|--|-----|-----|
| WC, UI, Revenue accounts for employees (all three) | 10 | pts | List of equipment & tools with approximate value | 6 | pts |
| Memo of Understanding or Contract evidencing independent contractor status | 6 | pts | Liability insurance policy | 6 | pts |
| Business location, lease or rental agreement | 6 | pts | Bonding | 6 | pts |
| Trucking company lease agreement | 6 | pts | Business Tax form or records Sched C, E, F, or K | 6 | pts |
| Valid, current Partnership Agreement | 3 | pts | Form 1099's / business tax receipt | 3 | pts |
| Professional License | 3 | pts | Application or business license permit | 3 | pts |
| Registered name of business with SOS | 3 | pts | Business structure registered with the SOS | 3 | pts |
| Internet, on a professional list, or affiliation | 3 | pts | Education certification | 3 | pts |
| Fed Employer Identification Number FEIN | 1.5 | pts | Advertises services in a newspaper, phone book | 3 | pts |
| Business bank account | 1.5 | pts | Two or more bids or estimates | 3 | pts |
| Credit card – charge account in business name | 1.5 | pts | Telephone bill in business name | 1.5 | pts |
| Advertises using sign on vehicle, in yard, bulletin boards, corner lamp post, flyers | 1.5 | pts | Printed invoices, cards, brochures | 1.5 | pts |
| | | | Proof of orders for printed hats or shirts | 1.5 | pts |
| | | | Standard billing invoices | 1.5 | pts |
6. Sign at the bottom of the affidavit and have your signature notarized. In addition to confirming your identity, the notary must require you to verbally swear to the truth of the information supplied in and with your affidavit. If you agree to waive your rights as detailed in the waiver, sign the waiver and have your signature notarized.
7. Both the waiver and affidavit must be completed or your application will be denied.
8. Pay special attention to the civil penalty for misrepresentations made concerning a person's status as an independent contractor.
9. Make checks payable to Montana Department of Labor & Industry in the amount of \$125.
10. Mail the completed waiver, affidavit, attached documentation, and \$125 fee to:

Montana Department of Labor and Industry
Employment Relations Division
Independent Contractor Central Unit
P.O. Box 8011
Helena, MT 59604-8011

WAIVER of Workers' Compensation Benefits

Instructions: Sign this waiver only if you understand, agree to, and initial all the following statements:

I, _____, am executing this waiver in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department).

_____ I agree to waive all the rights and benefits to which I am entitled under Montana's Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 72, MCA, (Acts), for any work performed under an independent contractor exemption certificate. I understand and agree that if I am injured or develop an occupational disease while working for a hiring agent, I am precluded from obtaining any benefits under the Acts for any and all damages arising out of any injury or occupational disease related to my work performance under an independent contractor exemption certificate. I understand and agree that if I die from an injury or occupational disease related to my work performance under an independent contractor exemption certificate, this waiver is effective against any of my beneficiaries as designated under the Acts. I understand this waiver is not necessary for workers' compensation purposes if I elect to obtain workers' compensation insurance for myself as provided by the Acts.

_____ I understand and agree that if my independent contractor exemption certificate is granted, I will be conclusively presumed in court to have waived all benefits under the Acts for work performed under the certificate.

_____ I am engaged in an independently established trade(s), occupation(s), profession(s), or business(es) (occupation(s)) and I have provided accurate and truthful documentation to the Department to verify the existence of this occupation(s) in my affidavit application.

_____ When acting as an independent contractor, I agree to maintain my status as an independent contractor by being free from control or direction over the performance of my services and the details of my work, both under contract and in fact. I agree hiring agents will only be permitted to offer direction and exercise control in matters essential to specifying the end result. I understand that while performing work under my independent contractor exemption certificate that I am waiving benefits under the Acts unless I have a written or oral agreement to work as an employee for that hiring agent.

_____ I understand and agree that I am responsible for all taxes related to my work as an independent contractor.

_____ I understand the Department has the authority to investigate my working relationships as an independent contractor and may suspend or revoke my independent contractor exemption certificate if appropriate.

_____ I am of sound mind, I am 18 years of age or older, I have read and understand this waiver, and I am voluntarily and knowingly executing this waiver free from duress, coercion, or misrepresentation from any person.

By signing this waiver, I understand and agree that I WAIVE ALL STATUTORY RIGHTS AND BENEFITS THAT I AM ENTITLED TO UNDER THE ACTS.

By: _____ Dated: _____
Applicant Signature

SUBSCRIBED before me this ____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

Residing at _____,

My commission expires _____

(Notarial seal)

IC Waiver May 6, 2005